

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016

Public Governance, Performance and Accountability (Establishing Old Parliament House) Amendment Rules 2019

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) sets out a framework for regulating resource management by the Commonwealth and relevant entities. Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Section 87 of the PGPA Act provides a power to create statutory body corporates, which are not companies, by rules made under the PGPA Act. The *Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016* (PGPA OPH Rule) establishes Old Parliament House (OPH) as a corporate Commonwealth entity. The PGPA OPH Rule also provides for OPH's purpose, functions, powers, its Board, staffing and financial arrangements.

The *Public Governance, Performance and Accountability (Establishing Old Parliament House) Amendment Rules 2019* (Amendment Rules) amend the PGPA OPH Rule to reflect the transfer of responsibility for OPH from the Communications and the Arts portfolio to the Prime Minister and Cabinet portfolio, as reflected in amendments to the Administrative Arrangements Order (AAO) made by the Governor-General on 8 August 2019. The AAO amendments, which establish responsibility for OPH in the Prime Minister and Cabinet portfolio, will take effect from 1 September 2019.

The Amendment Rules replace references to 'Arts Minister' with 'Minister' who will be defined as the responsible Minister for OPH. The portfolio responsibility for OPH will be determined by the AAO. These amendments will remove the need to update references to the responsible Minister for OPH to reflect future changes to portfolio responsibility for OPH in the AAO. The Amendment Rules will commence on 1 September 2019.

The Amendment Rules also include transitional provisions to remove doubt that existing directions or other decisions of the Arts Minister, made prior to 1 September 2019, are taken to be directions or decisions of the responsible Minister for OPH. The Arts Minister is defined as the Minister administering the *National Portrait Gallery of Australia Act 2012*.

Details of the Amendment Rules are set out at Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with Old Parliament House, the Department of Communications and the Arts, and the Department of the Prime Minister and Cabinet.

Details of the *Public Governance, Performance and Accountability (Establishing Old Parliament House) Amendment Rules 2019*

Section 1 – Name

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability (Establishing Old Parliament House) Amendment Rules 2019* (Amendment Rules).

Section 2 – Commencement

This section provides that this instrument commences on 1 September 2019.

Section 3 – Authority

This section provides that this instrument is made under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Section 4 – Schedules

This section provides that the *Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016* (PGPA OPH Rule) is amended as set out in the Schedule to this instrument.

Schedule 1 – Amendments

Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016

Item 1 – Section 6 (definition of *Arts Minister*)

This item repeals the definition of ‘Arts Minister’ from section 6 of the PGPA OPH Rule. Prior to these amendments, the Arts Minister was the responsible Minister for Old Parliament House (OPH).

Item 2 – Section 6 (definition of *Department*)

This item replaces the reference to ‘Arts Minister’ with the reference to ‘Minister’ in the definition of ‘Department’ in section 6 of the PGPA OPH Rule.

Item 3 – Section 6

This item inserts the definition of ‘Minister’ in section 6 of the PGPA OPH Rule to mean the responsible Minister for OPH. The portfolio responsibility for OPH will be determined by the Administrative Arrangements Order.

Item 4 – Section 7

This item repeals section 7 of the PGPA OPH Rule which defined the Arts Minister as responsible for OPH for paragraph 87(n) of the PGPA Act. The section is obsolete as the new definition of ‘Minister’ in section 6 of the PGPA OPH Rule identifies the responsible Minister for OPH for paragraph 87(n) of the PGPA Act.

Items 5 and 6

Items 5 and 6 amend subsection 8(2) and paragraph 9(d) of the PGPA OPH Rule to replace references to ‘Arts Minister’ with references to ‘Minister’.

Item 7 – Section 11 (heading)

This item repeals the heading of section 11 of the PGPA OPH Rule, and substitutes it with the heading ‘11 Minister may give directions to OPH’.

Items 8 to 22

Items 8 to 22 amend relevant sections, subsections and paragraphs of the PGPA OPH Rule to replace references to ‘Arts Minister’ with references to ‘Minister’.

Item 23 – Part 7 (heading)

This item repeals the heading of part 7 of the PGPA OPH Rule, and substitutes it with the heading ‘Part 7 – Initial transitional matters’.

Items 24 and 25

Items 24 and 25 amend subparagraphs 54(1)(b)(i) and 55(1)(b)(i) and subsection 62(3) of the PGPA OPH Rule to replace references to ‘Arts Minister’ with references to ‘Minister’.

Item 26 – After Part 7

This item inserts a new part 8 in the PGPA OPH Rule to deal with transitional matters following the commencement of the Amendment Rules on 1 September 2019. A new section 65 in the PGPA OPH Rule clarifies that any existing directions or decisions made by the Arts Minister before 1 September 2019 are taken to be directions or decisions of the responsible Minister for OPH. The Arts Minister is defined as the Minister administering the *National Portrait Gallery of Australia Act 2012*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Public Governance, Performance and Accountability (Establishing Old Parliament House) Amendment Rules 2019

The *Public Governance, Performance and Accountability Amendment (Establishing Old Parliament House) Amendment Rules 2019* (Amendment Rules) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) establishes a framework for regulating resource management by the Commonwealth and relevant entities. Section 101 of the PGPA Act provides that the Minister for Finance may make rules by legislative instrument to prescribe matters giving effect to the Act.

Section 87 of the PGPA Act provides a power to create statutory body corporates, which are not companies, by rules made under the PGPA Act. The *Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016* (PGPA OPH Rule) establishes Old Parliament House (OPH) as a corporate Commonwealth entity. The PGPA OPH Rule also provides for OPH's purpose, functions, powers, its Board, staffing and financial arrangements.

The *Public Governance, Performance and Accountability (Establishing Old Parliament House) Amendment Rules 2019* (Amendment Rules) amend the PGPA OPH Rule to reflect the transfer of responsibility for OPH from the Communications and the Arts portfolio to the Prime Minister and Cabinet portfolio, as reflected in amendments to the Administrative Arrangements Order (AAO) made by the Governor-General on 8 August 2019. The AAO amendments, which establish responsibility for OPH in the Prime Minister and Cabinet portfolio, will take effect from 1 September 2019.

The Amendment Rules replace references to 'Arts Minister' with 'Minister' who will be defined as the responsible Minister for OPH. The portfolio responsibility for OPH will be determined by the AAO. These amendments will remove the need to update references to the responsible Minister for OPH to reflect future changes to portfolio responsibility for OPH in the AAO. The Amendment Rules will commence on 1 September 2019.

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Human rights implications

The Amendment Rules do not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Rules are compatible with human rights as they do not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance**